

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

BRANDON GOBER, #01942989,

Plaintiff,

v.

ROBERT GUITIEREZ, et al.,

Defendants.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case No. 6:21-cv-251-JDK-KNM

**ORDER ADOPTING THE REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Brandon Gober, a Texas Department of Criminal Justice inmate proceeding pro se, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell for findings of fact, conclusions of law, and recommendations for disposition.

On July 2, 2021, Judge Mitchell issued a Report recommending that Plaintiff's civil rights action be dismissed with prejudice for the purposes of proceeding *in forma pauperis*. She also recommended that Plaintiff's motion for leave to proceed *in forma pauperis* (Docket No. 2) be denied—as Plaintiff has accumulated at least three strikes under the Prison Litigation Reform Act before filing this June 2021 lawsuit. Judge Mitchell also found that Plaintiff failed to demonstrate imminent danger under § 1915(g). Docket No. 4. A copy of this Report was sent to Plaintiff at his address. The docket reflects that Plaintiff received a copy of the Report on July 7, 2021. Docket No. 5. To date, however, no objections to the Report have been filed.


This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, Plaintiff did not object in the prescribed period. The Court therefore reviews the Magistrate Judge’s findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”).

Having reviewed the Magistrate Judge’s Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 4) as the findings of this Court. Therefore, it is **ORDERED** that Plaintiff’s civil rights lawsuit is **DISMISSED**, with prejudice for the purposes of proceeding *in forma pauperis* under 28 U.S.C. § 1915(g), but without prejudice as to the refiling of his lawsuit without seeking *in forma pauperis* status. If Plaintiff pays the requisite \$402 filing fee within fifteen days of this Order, the lawsuit shall proceed as though the full filing fee had been paid from

the outset. Further, it is **ORDERED** that Plaintiff's motion for leave to proceed *in forma pauperis* (Docket No. 2) is **DENIED**.

So **ORDERED** and **SIGNED** this **3rd** day of **August, 2021**.

  
\_\_\_\_\_  
JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE